



PROPERTY VOLUME I

**Course Materials
2002-2003**

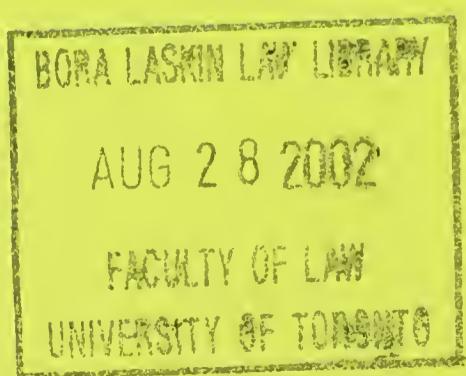
Professor Arnold Weinrib

**Faculty of Law
University of Toronto**

Storage

***** These Materials are for the sole use of students of the faculty of Law,
University of Toronto**

**KE
618
.A7W44
2002
v.1
c.1**



PROPERTY
VOLUME I

Course Materials
2002-2003

Professor Arnold Weinrib

Faculty of Law
University of Toronto

***** These Materials are for the sole use of students of the faculty of Law,
University of Toronto**



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

<https://archive.org/details/propertycoursema01wein>

VOLUME ONE

I. WHAT IS PROPERTY?

A. Unfair Competition and Protection of Intangibles

i) Common Law

MacPherson, "The Meaning of Property"	1-1
International News Service v. Associated Press	1-7
Metropolitan Opera Ass'n v. Wagner Nicols	1-18
Victoria Park Racing v. Taylor	1-25
Notes	1-33
Institut National des Appellations d'Origine des Vins v. Andres Wines	1-35
Notes	1-54

ii) Criminal Law

R v. MacEwen, R v. Bell	1-56
R v. Stewart	1-59

B. The Taking of Property

Pennsylvania Coal Co. v. Mahon	1-70
Note: Keystone Bituminous Coal Co. v. Mahon	1-74
Belfast Corp. v. O.D. Cars Ltd.	1-75
Manitoba Fisheries Ltd. v. R	1-79
A & L Investments Ltd. v. Ontario	1-93
Note	1-99

D. Property and Competing Rights

London Borough of Southwark v. Williams	1-100
Harrison v. Carswell	1-103
Note	1-112

II. ADVERSE POSSESSION

Callahan: <u>Adverse Possession</u>	2-1
Limitations Act	2-11
Re St. Clair Beach Estates Ltd. and MacDonald	2-13
Re Lundigrans Ltd. and Prosper et al.	2-19
Wallis's Cayton Bay Holiday Camp v Shell-Mex	2-21
Note: Buckinghamshire County Council v. Moran	2-33
Masidon Investments v. Ham	2-35
Beaudoin v. Aubin	2-45
Note	2-52

III. LAND: THE ESTATE SYSTEM

A. Fee Simple Estates

R. Scane, History of the Estate System	3-1
Laskin, Cases and Notes on Land Law	3-7
Conveyancing and the Law of Property Act	3-8

i) Defeasible Fees

Eastern Trust Co. v. McTague	3-9
------------------------------------	-----

ii) Defeasible Fees and Public Policy

Re Drummond Wren	3-17
Re Noble and Wolf	3-21
Conveyancing and Law of Property Act	3-30
Canadian Charter of Rights and Freedoms,	

1982, ss. 15, 32	3-31
Blathwayt v. Baron Crawley	3-32
Canada Trust Co. v. Ontario Human Rights	3-37
<u>iii) Defeasible Fees and Uncertainty</u>	
Sifton v. Sifton	3-52
Clayton v. Ramsden	3-62
Re Noble and Wolf	3-68
Re Hursham	3-71
Blathwayt v. Baron Crawley	3-73
<u>iv) Defeasible Fees and Restraints on Alienation</u>	
Laurin v. Iron Ore Co. of Canada	3-75
Stevens v. Gulf Oil Canada Ltd.	3-84
<u>B. Fee Tail Estate</u>	
R. Scane, The Estate in Fee Tail	3-90
<u>C. Life Estates</u>	
R. Scane, Life Estates	3-93
R. Scane, Competition Between Interests	3-97

VOLUME TWO

IV. EASEMENTS

A. Essential Requirements

In Re Ellenborough park	4-1
Temma Realty v. Ress Enterprises	4-11
Phipps v. Pears	4-20
Note	4-22

B. Creation of Easements

i) By Implied Reservation

Sandom v. Webb	4-23
Barton v. Raine	4-31

ii) By Necessity or Implied Grant

Wong v. Beaumont Property Trust Ltd.	4-37
B.O.J. Properties Ltd. v. Allen's....	4-42
Nickerson v. Barraclough	4-47
Conveyancing and Law of Property Act	4-52

iii) By Prescription

Limitations Act	4-53
Garfinkel v. Kleinberg	4-54
Rose v. Krieser	4-58

C. Scope of Easements

Malden Farms Ltd. v. Nicholson	4-69
Peacock v. Custins	4-74

V. RESTRICTIVE COVENANTS

A. Positive Covenants

Austerberry v. Oldham	5-1
Durham Condominium Corp. v. Amberwood	5-7

B. Negative Covenants

Tulk v. Moxhay	5-52
London County Council v. Allen	5-54
Note	5-63
Ontario Heritage Act R.S.O. 1990, c. O-18	5-64
Noble and Wolf v. Alley	5-65
Rogers v. Hosegood	5-69
Re Sekretov and City of Toronto	5-72
Note	5-75
Re Lakhani et al. and Weinstein	5-76

VI. LANDLORD AND TENANT

A. The Relationship and its Consequences

i) Tenants and Licensees

Re B.A. Oil and Halpert	6-1
Shell-Mex and B.P. Ltd. v. Manchester Garages Ltd.	6-10
Street v. Mountford	6-13

ii) Consequences of the Leasehold Relationship

Stewart v. Child's Co.	6-18
Goldhar v. Universal Sections and Mouldings Ltd.	6-19
Highway Properties Ltd. v. Kelly, Douglas and Co.	6-31
North Bay T.V. and Audio Ltd. v. Nova Electronics	6-40

B. Landlord's Obligations

i) Quiet Enjoyment

Owen v. Gadd	6-45
Kenny v. Preen	6-50
Note	6-54

ii) Non-Derogation from Grant

Harmer v. Jumil (Nigeria) Tin Areas Ltd.	6-56
Caplan v. Acadian Machinery Ltd.	6-59
Port v. Griffith	6-60
Note	6-64

iii) Fitness For Use

Smith v. Marrable	6-65
Sutton v. Temple	6-67
Hart v. Windsor	6-68
Bryner v. Thompson	6-71
Note	6-72
Barrett v. Lounova (1984) Ltd.	6-73
Johnson v. Givens	6-79

iv) Statutory Duty to Repair

Pajelle Investments Ltd. v. Herbold	6-84
Note	6-91
McQuestion v. Schneider	6-92
Note	6-94

C. Tenant's Obligations

i) Payment of Rent and Defences from Rent Actions

(a) Surrender and Abandonment

Note	6-95
Windmill Place v. APECO of Canada Ltd.	6-96
Toronto Housing Co. Ltd. v. Postal Promotions Ltd. (Ont. H.C.)	6-100
Toronto Housing Co. Ltd. v. Postal Promotions Ltd. (Ont. C.A.)	6-105

(b) Frustration	
Waddams, "The Law of Contracts"	6-107
Note	6-108
(c) Illegality	
Note	6-109
<u>ii) Restrictions on User and Duty to Repair</u>	
McQuaig v. Lalonde	6-110
Note	6-114
Norbury Sudbury Ltd. v. Noront Steel (1981) Ltd.	6-115
<u>iii) Relief from Forfeiture</u>	
Re Jeans West Unisex Ltd. and Hung	6-128
Note	6-132
<u>D. Transfer by the Tenant</u>	
<u>i) Consequences of Transfer</u>	
Francini v. Canuck Properties Ltd.	6-134
<u>ii) Need for Landlord's Leave</u>	
Wakefield v. Cottingham	6-137
Lifshitz v. Forest Square Apts. Ltd.	6-145
<u>iii) Reasonableness of Landlord's Refusal</u>	
Houlder Bros. and Co. v. Gibbs	6-149
Note	6-159
Re Griff and Somerset Management Services Ltd.	6-161
<u>E. Tenant Protection Act</u>	
Tenant Protection Act, 1997	6-164

VII. ABORIGINAL RIGHTS

Reproduced from Phillips Casebook

A. Introduction

Notes	7-1
-------------	-----

B. Aboriginal Title and Rights at Common Law: Pre-Section 35 Cases

Calder v Attorney-General of British Columbia	7-2
Aboriginal Title after Calder	7-9
Guerin v. The Queen	7-11

C. Aboriginal Rights & the Constitution: Section 35, Extinguishment & Regulation

Notes	7-12
-------------	------

D. Aboriginal Title and the Constitution

Delgamuukw v British Columbia	7-13
-------------------------------------	------

E. Aboriginal Rights and Common Law Property Principles

St. Mary's Indian Band v. Cranbrook	7-30
---	------